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PREPARATORY COMMITTEE ON THE ESTABLISHMENT
OF AN INTERNATIONAL CRIMINAL COURT
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TENTATIVE DRAFT ON PROCEDURE

Working paper submitted by Japan

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I. GENERAL PRINCIPLES

1. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, without due process of law.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty.

3. The accused, at all times, shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his/her own efforts, be assigned to his/her use by the Court. Matters concerning the qualification of counsel and the counsel assigned by the Court shall be provided in the Rules of the Court.

4. No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment, nor shall any person be compelled to testify against himself/herself or to confess guilt.

5. No person shall be held guilty by this Court unless the act in question constituted a crime under the definition of crimes of this Statute at the time the act occurred and such conduct occurred after the entry into force of this Statute. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by this Statute for the imposition of the lighter penalty, the offender shall benefit thereby.

II. INVESTIGATION AND PROSECUTION

1. If the Prosecutor concludes that there is a basis for a prosecution under this Statute, he/she shall, in accordance with the Rules of the Court, investigate the case, by seeking the cooperation of the States concerned or by himself/herself. The investigation shall be conducted in conformity with international law and with full respect for the sovereignty of the States concerned.

2. No person shall be subjected to arbitrary arrest or detention. Nor shall any person be deprived of his liberty except on such grounds and in accordance with such procedure as are established by the Rules of the Court.

3. Any person is arrested or provisionally arrested shall be informed, at the time of arrest or provision arrest, of the reasons for his arrest or provisional arrest and shall be promptly informed of any charges against him/her in accordance with the Rules of the Court.

4. Any person arrested, provisionally arrested or detained on a criminal charge shall, in accordance with the Rules of the Court, be brought promptly before a judge or other officer authorized to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

5. Any person who is deprived of his/her liberty by arrest, provisional arrest or detention shall, in accordance with the Rules of the Court, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful.

6. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued, in accordance with the Rules of the Court, for adequate cause and particularly describing the place to be searched and things to be seized, or except on such grounds and in accordance with such procedure as are established by the Rules of the Court.

7. If upon investigation the Prosecutor concludes that there is a prima facie case, he/she shall file with the Registrar an indictment containing a concise statement of the allegations of fact and of the crime or crimes with which the suspect is charged.

III. TRIAL AND JUDGEMENT

1. The accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

2. Trials shall be conducted and judgement declared publicly. Where the Court unanimously determines publicity to be dangerous to public order, a trial may be conducted privately.

3. The accused is entitled to be informed promptly of the nature and cause of the charge against him/her and to have adequate time and facilities for the preparation of his/her defence and to communicate with counsel.

4. The trial shall not be held if the accused is not present. When the accused under detention has, when summoned on the date for trail refused to appear without good reason and made it particularly difficult to bring him/her to the Court, the Court may conduct the proceedings of trial on that date without the presence of the accused.

5. The accused is entitled to have the free assistance of an interpreter if he/she cannot understand or speak the language used in court.

6. The detailed regulations of procedure concerning trial and judgement including perjury shall be provide din the Rules of the Court.

7. No person shall be found guilty unless the Prosecutor proves beyond a reasonable doubt that the defendant has committed every element of the offence with which he/she is charged.

8. In the event of a conviction, the Trial Chamber shall hold a further hearing to hear any evidence relevant to sentence, to allow the Prosecutor and the defence to make submissions and to consider the appropriate sentence to be imposed. In imposing sentence the Trial Chamber should take into account such

factors as the gravity of the crime and the individual circumstances of the convicted person.

IV. EVIDENCE

1. The accused shall be permitted full opportunity to examine all witnesses, and he/she shall have the right of compulsory process for obtaining witnesses on his/her behalf at public expense.

2. A document, audio recording, or video recording containing a statement of a person other than the accused, which was given before a judge of the court of a State party, is admissible in evidence when that person is not able to testify before the Court because of death, illness, injury, old age or other good cause.

3. Evidence obtained by means of a serious violation of this Statute or the International Covenant on Civil and Political Rights shall not be admitted in evidence.

4. Confession made under compulsion, torture or threat, or after prolonged arrest, provisional arrest or detention, or which is suspected not to have been made voluntarily, shall not be admitted in evidence.

5. No person shall be convicted or punished in all cases where the only proof against him/her is his/her own conviction.

V. APPEAL AND REVIEW

1. The convicted person and the Prosecutor may, in accordance with the Rules of the Court, appeal against his/her conviction and sentence on grounds of procedural error, error of fact or law, or disproportion between the crime and the sentence.

2. The convicted person and the Prosecutor may, in accordance with the Rules of the Court, apply to the court which rendered the original judgement for revision of the conviction on the ground that evidence has been discovered which was not available to the applicant at the time the conviction was pronounced or affirmed and which could have been a decisive factor in the conviction.

3. The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply mutatis mutandis to proceedings provided by the preceding two paragraphs. Further rules that govern those proceedings shall be provided in the Rules of the Court.